



## WYOMING BEEF COUNCIL

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May 24, 2004

Angela C. Snyder  
Office of the Deputy Administrator  
Poultry Programs  
Agricultural Marketing Service (AMS) USDA  
1400 Independence Avenue, SW  
STOP 0256, Room 3932-South  
Washington DC 20250

Dear Ms. Snyder:

We appreciate the opportunity for input regarding the proposed amendment to the Beef Promotion and Research Order (BPRO) that will add a new paragraph 1260.302 authorizing an organic exemption to beef checkoff assessments.

As the Qualified State Beef Council administering the beef checkoff in Wyoming, the Wyoming Beef Council (WBC) would like to offer comments and change recommendations to facilitate managing this proposed new aspect of the program.

Before we review specific recommendations to the proposed amendment to the BPRO, the Wyoming Beef Council would like to state for the record, that the organic exemption to the checkoff sets a dangerous precedent. The exemption for organic producers could lead to other commodity groups seeking exemption from a program that benefits all producers regardless of their marketing niche.

Having said that, the WBC acknowledges that the rule is in process and we offer the enclosed change recommendations. We have amended or added information in paragraphs (a) through (h) addressing our concerns with the implementation and administration of this program. Additions to the proposed order are in bold italics and recommended deletions are stricken.

It must also be said that there is concern in the industry about possible abuses of this exemption. The Certification process must be stringent and the forms tightly controlled in order to monitor the program and prevent misuse and/or abuse. Organic producers, handlers, importers and others must know that THEY are responsible for ensuring the proper documentation is presented at the appropriate place and time. All collecting points must be alert for possible forgeries, unauthorized duplicates, and insist on proper documentation.

With regard to the specific proposed amendments to the BPRO, the WBC offers the following comments:

7 CFR Part 1260  
§1260.302 Organic Exemption

**Comment:** Please specify "Organic" Exemption

**Section 1260.302(a)** provides "a person who produces and markets solely 100% organic products and who does not produce any conventional or non-organic products shall be exempt from the payment of the promotion and research assessment with respect to any cattle or beef and beef products that are produced

*"Beef Promotion, Education and Research"*

**received**  
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on a certified organic farm as defined in Section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, "produce" means to grow or produce food, feed, livestock or fiber or to receive food, feed, livestock or fiber and alter that product by means of feeding, slaughtering or processing. The WBC has two comments relating to this section.

#### Comments:

(1) Paragraph (a) includes a definition of the word "produce" which provides "... for purposes of this section, 'produce' means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing." Based upon this definition of "produce", an importer that imports 100% organic beef and grinds that beef into hamburger is processing the beef and therefore could be subject to an exemption. However, this interpretation is an expansion of the proposed exemption as provided pursuant to the FAIR Act, which provides: "Notwithstanding any provision of a commodity promotion law, a person that produces and markets solely 100% organic products . . ." This proposed definition attempts to expand the applicability of an exemption to importers that are not performing a producer function. Section 3(12) of the Beef Promotion and Research Act (7 U.S.C. §2902(12)) states: "The term 'producer' means any person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee or other service fee." The intent of the FAIR Act amendment was to provide producers with an exemption if they "produce and market" 100% organic product. The expansion of the definition of "produce" to include processing activities illegally expands the application of the exemption to persons not intended to receive the benefit of the FAIR Act amendment. In fact, the application of this definition to importers inappropriately modifies the activity which was to be assessed. Under the Beef Promotion and Research Act, the "importation" of beef or beef products is the activity which would subject an importer to the liability to pay the assessment. By attempting to expand the definition of "produce" to include the processing of 100% organic product, the procedure for the assessment of imported beef products is impractical. The assessment is due upon the importation of the product, yet if the product imported is 100% organic beef and following importation the product is "processed" in some manner, the product after importation would then be subject to the exemption. There is nothing in the FAIR Act amendment that would justify expanding the exemption to activities such as processing (grinding hamburger), following the importation and assessment of a product to change the status as to whether the product should be assessed or not.

The WBC proposes that the definition of "produce" be modified to read as follows: *"For purposes of this section, 'produce' means to grow or produce food, feed, livestock or fiber or to receive livestock and alter that product by means of feeding."*

(2) Paragraph (a) as presented in the proposed Rule should be amended to add the following sentence: *"In order to be eligible under the exemption under this section, a person must not be owned, in whole or in part, or otherwise affiliated with a person that is subject to and pays assessments to a research and promotion program administered by the USDA or that produces or imports conventional non-organic agricultural products."*

This language needs to be added to prevent producers or importers who produce both organic and conventional products from using the exemption to circumvent payment of assessments. Under the proposed Rule, a company that is subject to assessments could create a subsidiary and argue that it deals in 100% organic products and therefore should benefit from the organic exemption.

**Section 1260.302 (b)** To apply for an exemption under this section, the organic producer/ importer shall submit the request to ~~the Board or other party as designated by the Board~~ *the Cattlemen's Beef Board (CBB)*, on a form provided by the ~~Board~~ *CBB*. *Organic producers/ importers shall submit their request at any time initially and annually thereafter on or before January 1 as long as the producer/ importer continues to be eligible for the exemption. Copies of the completed Certification of Organic Producer Exemption of Cattle Assessments forms shall be maintained on file by the producer/ importer, the Qualified State Beef Council or CBB, for 7 years.*

**Comment:** In paragraph (b) CBB is the approving authority for requests for the organic exemption. Producers and Importers will apply directly to CBB. Records retention-- Compliance audits usually review up to 7 years worth of records. Having the requirement to keep these forms for 7 years spelled out in the order would standardize record keeping.

**Section 1260.302(c)** The request shall include the following: the producer's/ *importer's* name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

**Comment:** This paragraph combines elements of Paragraph (c) and (g) addressing the application process for producers and importers which are essentially the same except for who the application is addressed to which is covered in paragraph (b).

**Section 1260.302(d)** If the producer/ importer meets requirements of this section *and complies with the proper application procedures*, ~~the Board or designee~~ the CBB will grant the exemption and issue a Certificate of Exemption to the producer within 60 days of receipt of the producer's application. *If the producer / importer fails to meet the requirements of this section, the Qualified State Beef Council or CBB will inform the producer / importer in writing that their application is denied.*

**Comment:** Specifies granting authority, timeline and a requirement to inform applicant of a denied request in writing. Thirty days may be too short. Sixty days allows for the request and presentation of any backup material that may be needed.

**Section 1260.302(e)** ~~The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment.~~ Upon Certification by the CBB, the organic producer will be issued a book of numbered Certification of Organic Exemption forms. The form will be provided by CBB. The organic producer/ importer claiming the exemption from paying the checkoff is responsible for making sure that a correctly completed original Certification of Organic Exemption Form accompanies the sale to the next purchaser **AT THE TIME OF THE TRANSACTION**. If the organic producer/ importer does not provide the Certificate of Exemption form at the time of the sale to each person responsible for collecting and remitting the assessment, the mandatory \$1 per head assessment **MUST** be collected. This form shall be used to document the exemption at the time of the sale and shall accompany the monthly remittance report submitted by the collecting point (buyer) to the Qualified State Beef Council.

**Comment:** Replaces paragraph (e) in its entirety. Allowing copies of forms makes programs vulnerable to abuse by those not eligible for the exemption. The new paragraph (e) specifies that there will be a numbered form that will be issued by the CBB to use specifically to claim this exemption. Issuance of this form will be controlled by CBB. The order must specify that this form must be filled out **COMPLETELY** and **CORRECTLY** and presented **AT THE TIME OF THE TRANSACTION** in order to claim the exemption. The amended Order should also specify that the exemption is granted to the producer/ handler/ importer, not the cattle, beef or beef product. If there are multiple transactions involving the same animal, unless each owner has an organic exemption specific to such owner, the dollar is due for every transaction past the first sale. The Certification of Organic Exemption Form will be a three part form with copies going to the producer, buyer and the Qualified State Beef Council for reporting purposes.

**Section 1260.302(f)** The person responsible for collecting and remitting the assessment, (*the Collecting Point*) shall maintain records showing the exempt producer's name, address and the exemption number assigned by ~~the Board or designee~~ CBB. Any time cattle are sold at a sale barn or part of another consignment-type sale, the collecting point, i.e., auction market, packer or sale company, shall separate organic cattle from other non-assessed cattle on the Monthly Remittance Report. We recommend the following procedure: If certified organic cattle are sold to or at a sale barn, packer, or other purchaser, (Collecting Point) that collecting point (who reports to the state beef council), shall list organic cattle on the monthly remittance report the same way they would report another state of origin (separate line) listing the total number of head marketed, total number of head not assessed, and in the area where they would normally list "Number of Head per State Assessed, they will insert "ORGANIC". The collecting point will ensure that a copy of the organic exemption certificate accepted by the collecting point is included with the monthly remittance report. If the collecting point does not collect the mandatory \$1 per head beef checkoff assessment because an organic producer claims the exemption, it is the responsibility of that collecting point to make sure the certificate is collected at the time of the sale. Certified organic producers, marketing cattle of that producers own production, in the form of beef or beef products, to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall submit to a qualified state beef council or to the board a certificate of exemption and a monthly report claiming the exemption in the same manner as the assessment.

**Comment:** Additions to paragraph (f) specify reporting procedures for producers and collecting points.

**Section 1260.302(h)** *In order to ensure that only certified organic producers, handlers, importers and others are granted this exemption, USDA AMS shall provide the Cattlemen's Beef Board (CBB) with periodic (quarterly) updates of those producers/handlers /importers granted NOP Certification and those whose certification has been revoked.*

**Comment:** This adds paragraph (h) to codify a requirement for USDA to provide information to CBB in order to track authorized use of the program. There is concern in the industry about possible abuses of this exemption. The Certification process must be stringent and the forms tightly controlled in order to monitor the program and prevent misuse/ abuse. Organic producers, handlers, importers and others must know that THEY are responsible for ensuring the proper documentation is presented at the appropriate place and time. All collecting points must be alert for possible forgeries, unauthorized duplicates, and insist on proper documentation.

Thank you for your consideration.

Regards,



Ann P. Wittmann  
Executive Director  
**Wyoming Beef Council**